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Paper No. 4

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In re Application of
Kleiman et al.
Application No. 09/899,432
Filed: July 6, 2001
Attorney Docket No. 511-051

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OFFICE OF PETITIONS

ON PETITION

This is a decision on the petition filed September 18, 2001, to accord the above-identified application a filing date of July 3, 2001, instead of July 6, 2001.

Paragraph (c) of 37 CFR 1.10 sets forth procedures for filing a petition for a filing date where there is a discrepancy between the filing date initially accorded by the Office and the "date-in" entered by the USPS. Paragraph (d) of 37 CFR 1.10 sets forth procedures for filing a petition for a filing date where the "date-in" is incorrectly entered or omitted by the USPS.

Petitioner has failed to provide evidence establishing the "date-in" entered by the USPS. Specifically, petitioner has failed to provide the PTO with a copy of the express mail label. Paragraph (b) of 37 CFR 1.10 provides,

Correspondence should be deposited directly with an employee of the USPS to ensure that the person depositing the correspondence receives a legible copy of the "Express Mail" mailing label with the "date-in" clearly marked. Persons dealing indirectly with the employees of the USPS (such as by deposit in an "Express Mail" drop box) do so at the risk of not receiving a copy of the "Express Mail" mailing label with the desired "date-in" clearly marked.

Since an express mail label has not been provided, petitioner has failed to establish the "date-in" entered by the USPS.¹ Therefore, petitioner has failed to establish a discrepancy between the filing date accorded by the Office and the "date-in" entered by the USPS. In addition, petitioner has failed to establish that the "date-in" was incorrectly entered or omitted by the USPS.

Accordingly, the petition is **dismissed**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are NOT permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.10." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

¹ Without a copy of the label, the Office is also unable to determine whether the package was deposited with the proper postage and with the label properly attached. Obviously, the package could not be delivered, if the label had been disassociated from the package.

Petitioner requests that Office records be changed to reflect "the correction in the foreign priority." The Office is unclear as to the exact meaning of petitioner's request in so far as a claim to foreign priority has not been located in the file.

The declaration submitted fails to comply with 37 CFR 1.63. The declaration signed by Kleiman fails to indicate that he is a co-inventor *with Brown* and fails to include Brown's citizenship. The declaration signed by Brown fails to indicate he is a co-inventor with Kleiman and fails to include Kleiman's citizenship. A simple way to remedy the problem is to prepare a declaration including relevant information for both inventors. Brown may sign one copy and Kleiman may sign another (or both may sign the same copy). **Petitioner is hereby given two months to file a proper declaration. The time period may be extended under 37 CFR 1.136(a). The failure to file a proper declaration within the time period will result in the abandonment of the application.**

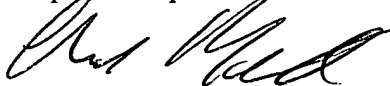
Further correspondence with respect to this matter should be addressed as follows:

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